IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.367 of 2004
Date of Decision : 13.11.2007.

Resham s/o Sewa Singh and others ....Appellants

versus

Lachhman Singh and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr.G.S.Nagra, Advocate for the appellants.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

This judgment shall dispose of R.S.A.No.367 of 2004 arising out of a suit for declaration, filed by the plaintiff-appellants challenging the Will, allegedly executed by one Jagta and R.S.A.No.264 of 2004 arising out of a suit for permanent injunction filed by the respondent. Since both the suits were consolidated and decided by a common judgment, therefore both the present appeals of the appellants are being decided together.

The present appellants are the inhabitants of Village Lakhpur, Tehsil Phagwara. It is the case of the appellants that the Mandir known as Khuhi Hai Labhu Bhagat Brasata Sahni, a religious Institution, was founded by one spiritual person named Shri Labhu Bhagat Ji. The said Institution is being looked after by the Sewadar/Sadh Sangat, public at large particularly belonging to Village Lakhpur. The management of the said Institution has always been with the public man whosoever had been at the relevant time as Sewadar and all such persons who had been carrying on the work of Sewadari to upkeep the Institution. It is alleged that defendant No.1 on the

basis of fictitious and fake Will dated 2.7.1991, allegedly executed by Jagta, got the mutation sanctioned in his favour and now he is claiming himself as owner of the suit property. It is also alleged that defendant No.1 is neither owner nor Sewadar of the said Institution. Even Jagta, father of defendant No.1, was not Sewadar of the said Institution. It is also alleged that office of Sewadari is not hereditary and Jagta was not competent to execute any Will in favour of defendant No.1.

In reply, it has been pointed out that the suit property is a private religious property formed by forefathers of defendant No.1 i.e. Bhagat Labhu Ji. There is a custom appointing a Sewadar by Will. Bhagat Labhu Ji appointed Bhagat Jawala Ji his Chela by Will and then Bhagat Jawala Ji appointed Bhagat Jagta by Will and then Bhagat Jagta appointed defendant No.1 as Sewadar by Will and thus, the plaintiffs have no right to interfere in the peaceful possession and management of the private religious Institution.

Both the Courts below have found that the property belongs to a private religious Institution and that there is custom of appointing Sewadar by Will. Therefore, the plaintiff is not entitled to the declaration sought for.

The defendants have proved the registered Will dated 2.7.1991, Exhibit DW-2/1. The said Will has been proved by examining DW-2 Satpal Singh, Deed Writer, who scribed the Will. The attesting Witness Mohan Singh has been examined as DW-3. On the basis of said statement, the Court found that execution of the Will is proved and there is no suspicious circumstance on the record. The Court has referred to a judgment reported as "***Walaiti Ram Versus Nathu Ram, 1939 P.L.R.539"*** to hold that when

the founder applies his own property to the creation of a religious foundation, keeping the property itself and control over it absolutely in his own hands, there can not be said to be dedications to the public, even though the community may be greatly benefited by this arrangement. The Institution was founded by Bhagat Labhu Ji who kept control over it, absolutely in his own hands and by Will made Jawala Ji its Sewadar who further appointed Jagta as Sewadar and Jagta appointed defendant No.1 as Sewadar. Merely because defendant No.1 is son of Jagta is not a ground to return a finding that Jagta could not appoint defendant No.1 as Sewadar.

Both the Courts below, after appreciating the entire evidence on record, have recorded a concurrent finding of fact that the plaintiff has no cause to claim declaration in respect of the Institution in question. Such finding is based on proper appreciation of evidence. It could not be pointed out that any evidence has been misread or not taken into consideration.

I do not find any illegality or irregularity in the finding recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeals.

Consequently, both the present appeals are dismissed in limine.

13-11-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**